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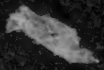
SUPREME COURT OF THE UNITED [illegible]

[illegible]

No. [illegible]



ELIAS S. A. DE LIMA [illegible] A. DE LIMA, AND [illegible] DE LIMA, COMPOSING THE FIRM OF E. A. [illegible] CO., PLAINTIFFS IN ERROR,

vs.

[illegible] E. BIDWELL.

[illegible]

IN ERROR TO THE [illegible] COURT OF THE [illegible]

[illegible]

20107

(17,941.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 456.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, AND EDWARD DE LIMA, COMPOSING THE FIRM OF D. A. DE LIMA & CO., PLAINTIFFS IN ERROR,

vs.

GEORGE R. BIDWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1900.

1 Circuit Court of the United States for the Southern District of New York.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and Edward de Lima, Composing the Firm of D. A. de Lima & Co., Plaintiffs,
against
GEORGE R. BIDWELL, Defendant.

At Law. Petition for Writ of Error.

Now come Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, composing the firm of D. A. de Lima & Co., plaintiffs herein, and say:

That on or about the 16th day of October, 1900, this court entered a judgment herein in favor of the defendant and against the plaintiffs, in which judgment and proceedings prior thereunto in this case certain errors were committed to the prejudice of these plaintiffs; all of which will more in detail appear from the assignment of errors, which is filed with this petition.

Wherefore these plaintiffs pray that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated October 16, 1900.

COUDERT BROTHERS,
Attorneys for Plaintiffs.

(Endorsed:) U. S. circuit court, southern district of New York. Elias S. A. de Lima and o'rs, plaintiffs, against George R. Bidwell, defendant. Petition for writ of error. Coudert Brothers, attorneys for plaintiff-, 71 Broadway, New York. U. S. circuit court. Filed Oct. 18, 1900. John A. Shields, clerk.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima (composing the firm of D. A. de Lima & Co.), plaintiffs, against George R. Bidwell, defendant, a manifest error hath happened, to the great damage of the said Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima (composing the firm of D. A. de Lima & Co.), as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to

the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 12th of November next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of October, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

3 The foregoing writ is allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

4 [Endorsed:] Elias S. A. de Lima & o'rs, pl'ffs in error, vs. George R. Bidwell, def't in error. Writ of error. Service is hereby admitted of a copy of the within. Oct. 18, 1900. A copy of the within paper has been this day received at this office. Oct. 18, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Oct. 18, 1900. John A. Shields, clerk. S.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

5 I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from six to twenty-three, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, composing the firm of D. A. de Lima & Co., plaintiffs in error, against George R. Bidwell, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eighteenth day of October, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Oct. 18, 1900.]

6 Supreme Court of the State of New York, County of New York.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and EDWARD de Lima, Composing the Firm of D. A. de Lima & Co., Plaintiffs,
against
GEORGE R. BIDWELL, Defendant.
} Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated N. Y., March 12th, 1900.

COUDERT BROTHERS,
Plaintiffs' Attorneys.

Post-office address and office, No. 71 Broadway, New York city.

7 Supreme Court of the State of New York, County of New York.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and EDWARD DE LIMA, Composing the Firm of D. A. de Lima & Co., Plaintiffs,
against
GEORGE R. BIDWELL, Defendant.

Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, as members of and doing business as the firm of S. A. de Lima & Co. in the city of New York (the above-named plaintiffs), through Coudert Brothers, their attorneys, complain of George R. Bidwell, the defendant above named, and thereupon the said plaintiffs state:

First. That at all the times hereinafter mentioned the said defendant was the duly appointed and commissioned collector of customs of the United States at the port of New York, in the actual and unrestricted exercise of his functions as such collector, and fully vested with all the powers and authority of his said office.

Second. That on or about the 6th day of November, 1899, the defendant, being such collector as aforesaid, did under color of his said office and through the improper exercise of the powers and authority in him vested for the purposes of the performance of his duties as such collector, unlawfully demand and by duress of goods collect from the plaintiffs' said firm of D. A. de Lima &

8 Co. as alleged duties upon certain sugars, the product of the island of Puerto Rico, consigned to these plaintiffs at the port of New York, and brought thither from the port of San Juan in the said island during the month of July, 1889, by steamer Salamanca (the said sugars being those mentioned and described in warehouse entry No. 117,587, bond No. 1224, liquidated Sept. 11th, 1899), the

sum of two thousand four hundred and fifty dollars and fifty-eight cents ($2,450.58), which sum the plaintiffs were unlawfully and against their will and in spite of their formal protest duly made, compelled to pay and did pay, in order to obtain possession of the said sugars, to which they were entitled, but which the said defendant, enabled so to do by the power and authority of his said office, had detained, was detaining and threatened to continue to detain, from them, exacting as a condition to the delivery thereof, such payment of said alleged duties, whereas the said sugars were not liable to duty, the same not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any port of the United States.

Third. That on or about the 14th day of September, 1899, the defendant, being such collector as aforesaid, did, under color of his said office, and through the erroneous exercise of the powers and authority in him vested for the purposes of the performance of his duties, as such collector, unlawfully demand and by duress of goods collect from the plaintiffs' said firm of D. A. de Lima & Co., as alleged duties upon certain sugars, the product of the island of Puerto Rico,
consigned to these plaintiffs at the port of New York, and
9 brought thither from the port of San Juan in the said island
during the month of June, 1899, by steamer Evelyn (the said sugars being those mentioned and described in consumption entry No. 95684, liquidated Sept. 11th, 1899), the sum of five thousand four hundred and fifty-two dollars and sixty-one cents ($5,452.61), which sum these plaintiffs were unlawfully and against their will and in spite of their former protest duly made, compelled to pay, and did pay, in order to obtain possession of said sugars, to which they were entitled, but which the said defendant, enabled so to do by the power and authority of his said office, had detained, was detaining, and threatened to continue to detain from them, exacting as a condition to the delivery thereof such payment of such alleged duties, whereas the said sugars were not liable to duty, the same not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States, in that regard, be admitted to free entry in any part of the United States.

Fourth. That on or about the 1st day of September, 1899, the defendant, being such collector as aforesaid, did, under color of his said office, and through the erroneous exercise of the powers and authority in him vested for the purposes of the performance of his duties, as such collector, unlawfully demand and by duress of goods collect from the plaintiffs' said firm of D. A. de Lima & Co., as alleged duties upon certain sugars, the product of the island of Puerto Rico, consigned to these plaintiffs at the port of New York, and brought thither from the port of San Juan in the said island during the month of ——, 1899, by steamer Catania (the same sugars being

those mentioned and described in consumption entry No. 89319, liquidated September 1st, 1899), the sum of five thousand two hundred and forty-two dollars and seventeen cents ($5,242.17) which sum these plaintiffs were unlawfully and against their will and in spite of their formal protest duly made, compelled to pay, and did pay, in order to obtain possession of their said sugars, to which they were entitled, but which the said defendant, enabled so to do by the power and authority of his said office, had detained, was detaining, and threatened to continue to detain, from them, exacting as a condition to the delivery thereof, such payment of such alleged duties, whereas the said sugars were not liable to duty, the same not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any part of the United States.

Wherefore these plaintiffs demand judgment against the said defendant for the sum of thirteen thousand one hundred and forty-five dollars and thirty-six cents, with interest on $2,450.58 thereof from the 6th day of November, 1899, and with interest on $5,452.61 thereof from the 14th day of September, 1899, and with interest on $5,242.17 thereof from the 1st day of September, 1899, together with the costs of this action.

COUDERT BROTHERS,
Attorneys for Plaintiffs, D. A. De Lima & Co.,
By E. S. A. DE LIMA.

STATE OF NEW YORK, }
City and County of New York, } ss:

Elias S. A. de Lima, being duly sworn, says: That he is one of the plaintiffs in this action; that he has read the foregoing complaint, and that the same is true to his knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ELIAS S. A. DE LIMA.

Sworn to before me this 13th day of March, 1900.
A. WOLFF,
Notary Public, Richmond Co.

Certificate filed in New York county.

11 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

To the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit:

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

George R. Bidwell, petitioner and affiant, respectfully showeth that he was prior to the commencement of the suit hereinafter referred to collector of the customs for the port and district of the city of New York, duly appointed according to law, and that on or about the 12th day of March, 1900, a suit was commenced against him by Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, composing the firm of D. A. de Lima & Co., in the supreme court of the State of New York, for or on account of acts done by him under the revenue laws of the United States and as such collector, and that he has been served with process in said suit in said southern district, and that no trial has been had in said cause.

He therefore prays that, in pursuance of the act of Congress in such case made and provided, the said cause so commenced in the said supreme court may be removed therefrom and entered on the docket of this honorable court and thereafter proceeded in as a cause originally commenced in this court.

And he will ever pray, etc.

And, being duly sworn, deposes and says that the matters hereinbefore set forth are true to the best of his knowledge, information, and belief.

G. R. BIDWELL.

Sworn to before me this 19th day of March, A. D. 1900.

FRANCIS B. ANTZ,
[SEAL.] *Notary Public, N. Y. County.*

I certify that, as counsel for the petitioner, I have examined into the proceedings against him and have carefully inquired into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

New York, March 22, 1900.

HENRY L. BURNETT,
U. S. Attorney, Counsellor of the said Circuit Court.

(Endorsed:) U. S. circuit court. Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, composing the firm of D. A. de Lima & Co., *vs.* George R. Bidwell, collector of customs at the port of New York. Petition to remove cause. Henry L. Burnett, United States attorney, attorney for defendant. U. S. circuit court. Filed Mar. 22, 1900. John A. Shields, clerk.

11½ The President of the United States of America to the judges of the supreme court of the State of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against George R. Bidwell, defendant, by Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, composing the firm of D. A. de Lima & Co., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court at the city of New York, in the borough of Manhattan, on the 24th day of March, 1900, as fully and amply as the same are remaining before you by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Hon. Melville W. Fuller, Chief Justice of the United States, the 22nd day of March, in the year one thousand nine hundred.

[L. S.] JOHN A. SHIELDS, *Clerk.*

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant.

(Endorsed): U. S. circuit court. Elias S. A. de Lima *et al. vs.* George R. Bidwell. Certiorari. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Mar. 22, 1900. John A. Shields, clerk. I hereby certify that on the 22nd day of March, 1900, at the city of New York, in my district, I served the within certiorari upon the within-named judges of the supreme court of the State of New York, by exhibiting to John A. Wrede, deputy county clerk of New York county, the within original, and at the same time leaving with him a copy thereof. William Henkel, U. S. marshal, S. D. N. Y. Dated March 22, 1900.

12 U. S. Circuit Court, Southern District of New York.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and Edward de Lima, Composing the Firm of D. A. de Lima & Co., Plaintiffs, *vs.* GEORGE R. BIDWELL, Defendant.	Demurrer. N. S. # 19005.

The defendant above named, by Henry L. Burnett, United States attorney for the southern district of New York, attorney for the defendant in the above-entitled action, demurs to the plaintiffs' complaint therein:

First. Upon the ground that it does not state facts sufficient to constitute a cause of action against the defendant.

Second. Upon the ground that this court has no jurisdiction of the cause of action alleged in said complaint against said defendant.

Dated April 2d, 1900.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant,
Room 50, P. O. Building, New York City.

Endorsed: U. S. circuit court, southern district of New York. Elias S. de Lima *et al.*, plaintiffs, *vs.* George R. Bidwell, defendant. Demurrer. Henry L. Burnett, U. S. attorney, for defendant. U. S. circuit court. Filed Ap'l 2d, 1900. John A. Shields, clerk.

13 At a stated term of the circuit court of the United States held in and for the southern district of New York, at the post-office building, in the borough of Manhattan, in the city of New York, on the 16th day of October, 1900.

Present: Hon. Alfred C. Coxe, judge.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and EDWARD DE LIMA, Composing the Firm of D. A. de Lima & Co., Plaintiffs,
against
GEORGE R. BIDWELL, Defendant.

This cause having been regularly brought on for argument upon the issues of law formed by the complaint of the plaintiffs and the demurrer interposed thereto by the defendant at a stated term of this court, held by me in and for the southern district of New York, at the post-office building, in the borough of Manhattan, city of New York, on the 16th day of October, 1900, and the said cause having been duly argued by Henry C. Platt, Esq., assistant U. S. attorney for the defendant, in support of the demurrer, and by Frederic R. Coudert, Jr., Esq., of counsel for the plaintiffs, in opposition to said demurrer, and due deliberation having been had thereon, it is, on motion of Henry L. Burnett, U. S. attorney and attorney for the defendant—

Ordered, adjudged, and decreed that the said demurrer be, and the same hereby is, sustained, both on the ground that the complaint does not state facts sufficient to constitute a cause of action against the defendant, and on the further ground that this court has no jurisdiction of the cause of action alleged in the complaint against the defendant.

It is further ordered, adjudged, and decreed that the com-
14 plaint of the plaintiffs be, and the same hereby is, dismissed with costs to the defendant, to be taxed.

ALFRED C. COXE, *U. S. J.*

(Endorsed:) Circuit court of the United States, southern district of New York. Elias S. A. de Lima *et al.*, plaintiffs, against George R. Bidwell, defendant. Decree. Henry L. Burnett, United States attorney, attorney for defendant. U. S. circuit court. Filed Oct. 17, 1900. John A. Shields, clerk.

15 United States Circuit Court, Southern District of New York.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and EDWARD de Lima, Composing the Firm of D. A. de Lima & Co., Plaintiffs,
against
GEORGE R. BIDWELL, Defendant.
} Judgment.

This action having been brought on for argument before the Honorable Alfred C. Coxe, district judde, at a stated term of this court held on the 15th day of October, 1900, at the post-office building in the city of New York, in the southern district of New York, and the plaintiffs having appeared by Coudert Brothers, Esqs., their attorneys, and the defendant by Henry L. Burnett, U. S. attorney, and argument having been had upon the demurrer to the complaint herein by Henry C. Platt, Esq., assistant U. S. attorney, of counsel for the defendant, in support of the demurrer, and by Frederic R. Coudert, Jr., Esq., in opposition thereto, and the said court having, on motion of Henry L. Burnett, Esq., U. S. attorney, attorney for the defendant, made and filed a decree, dated the 16th day of October, 1900, sustaining the said demurrer upon both the grounds therein stated and dismissing the complaint herein, and the costs of the defendant having been adjusted at the sum of sixteen $\frac{45}{100}$ ($16.45) dollars—

Now, on motion of Henry L. Burnett, Esq., U. S. attorney,
16 attorney for the defendant—

It is ordered, adjudged, and decreed that the complaint herein be dismissed, and that the defendant recover of the plaintiffs the said sum of sixteen $\frac{45}{100}$ ($16.4 dollars costs, and that the defendant have execution therefor.

Judgment signed this 17th day of October, 1900.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) United States circuit court, southern district of New York. Elias S. A. de Lima and others, plaintiffs, against George R. Bidwell, defendant. Judgment. U. S. circuit court. Filed Oct. 17, 1900, 5.10 p. m. John A. Shields, clerk.

17 Supreme Court of the United States.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and Edward de Lima, Composing the Firm of D. A. de Lima & Co., Plaintiffs in Error,
against
GEORGE R. BIDWELL, Defendant in Error.
} Assignment of Errors.

Afterwards, to wit, on the 16th day of October, 1900, before the Supreme Court of the United States, at the city of Washington, come the said plaintiffs in error, by Coudert Brothers, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

1st. That the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiffs in error.

2nd. That judgment was not given for the said plaintiffs in error against the said defendant in error, as demanded in the complaint.

3rd. That the said circuit court of the United States for the southern district of New York held that the facts stated in the complaint herein do not constitute a cause of action.

4th. That the said circuit court of the United States for the southern district of New York held that it, the said court, had no jurisdiction of this action.

5th. That in and by its said judgment the said circuit court dismissed the complaint herein with costs.

And the said plaintiffs in error pray that the judgment aforesaid for the errors aforesaid and other errors in the record and
18 proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs in error, may be restored to all things which they have lost by occasion of said judgment, &c.

COUDERT BROTHERS,
Attorneys for Plaintiffs in Error,
71 *Broadway, New York City.*

(Endorsed:) Supreme Court of the United States. Elias S. A. de Lima, Elias A. de Lima, and Edward de Lima, composing the firm of D. A. de Lima & Co., plaintiffs in error, against George R. Bidwell, defendant in error. Assignment of errors. Coudert Brothers, att'ys for pl'ffs in er., 71 Broadway, New York. U. S. circuit court. Filed Oct. 18, 1900. John A. Shields, clerk.

19 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and EDWARD DE LIMA, Composing the Firm of D. A. de Lima & Co., Plaintiffs in Error,

vs.

GEORGE R. BIDWELL.

Bond for Damages and Costs.

Know all men by these presents that we, Frederic R. Coudert, Jr., and Lorenzo Semple, are held and firmly bound unto the above-named George R. Bidwell in the sum of two hundred and fifty dollars, to be paid to the said George R. Bidwell; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 16th day of October, in the year of our Lord one thousand nine hundred.

Whereas the above-named Elias S. A. de Lima and others have sued out a writ of error to the Supreme Court of the United States

to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that
20 if the above-named Elias S. A. de Lima & o'rs shall prosecute the said writ to effect and answer all damages and costs if they fail to make their appeal or writ good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FREDERIC R. COUDERT, JR. [SEAL.]
LORENZO SEMPLE. [SEAL.]

Sealed and delivered and taken and acknowledged this 16th day of October, 1900, before me—

CHAS. A. CONLON,
Notary Public, N. Y. Co.

[SEAL.]

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Frederic R. Coudert, Jr., and Lorenzo Semple, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

FREDERIC R. COUDERT, JR.
LORENZO SEMPLE.

Sworn to this 16th day of October, A. D. 1900, before me—

CHAS. A. CONLON,
Notary Public, N. Y. Co.

[SEAL.]

(Endorsed:) U. S. circuit court, southern district of New York. Elias S. A. de Lima & o'rs *vs.* George R. Bidwell. Bond for
21 damages and costs on writ of error. Approved as to form and also as to sufficiency of sureties, with reservation, however, to the defendant in error of the right at any time to examine the sureties, under oath, touching their assets, liabilities, and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Oct. 18, 1900. John A. Shields, clerk.

22 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To George R. Bidwell, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at the city of Washington, on the 12th day of November, 1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Elias S. A. de Lima *et al.* are plaintiffs and you are defendant, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 18th day of October, in the year of our Lord one thousand nine hundred, and of the Independence of these United States the one hundred and twenty-fifth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

23 [Endorsed:] United States Supreme Court. Elias S. A. de Lima *et al.*, plaintiffs, *vs.* George R. Bidwell, defendant. Citation. Service is hereby admitted of a copy of the within. Oct. 18, 1900. A copy of the within paper has been this day received at this office. Oct. 18, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Oct. 18, 1900. John A. Shields, clerk. S.

Endorsed on cover: File No., 17,941. S. New York C. C. U. S. Term No., 456. Elias S. A. de Lima, Elias A. de Lima, & Edward de Lima, composing the firm of D. A. de Lima & Co., plaintiffs in error, *vs.* George R. Bidwell. Filed October 23rd, 1900.

28174

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, and EDWARD DE LIMA, composing the firm of D. A. DE LIMA & Co.,

Plaintiffs in error,

vs.

GEORGE R. BIDWELL,

Defendant in error.

Motion to Advance.

No. 456.

United States of America, ss.:

The plaintiffs in error respectfully move the Court to advance the above-entitled cause upon the docket, and set it down for hearing on such early day as shall be most convenient to the Court and satisfactory to the Attorney General, on the ground that it is one of great public interest, involving the legality of the imposition of customs duties at the port of New York on sugars brought into such port from the Island of Porto Rico during the months of June and September, 1899, that is to say, since the ratification and proclamation of the treaty of peace between the Kingdom of Spain and the United States.

This cause was a common-law action brought by the plaintiffs in error in the Supreme Court of the State of New York to recover back from the defendant in error,

who was and is the Collector of Customs at the port of New York, certain sums of money which the complaint alleges the said plaintiffs "were (by the said defendant) " unlawfully and against their will and in spite of their " formal protest duly made, compelled to pay and did " pay, in order to obtain possession of the said sugars, " to which they were entitled, but which the said defend- " ant, enabled so to do by the power and authority of his " said office, had detained, was detaining, and threatened " to continue to detain, from them, exacting as a con- " dition to the delivery thereof, such payment of said " alleged duties, whereas the said sugars were not liable " to duty, the same not having been imported from any " foreign country within the meaning of any valid stat- " ute or executive order of the United States, but were " merchandise which must, under and by virtue of the " provisions of the Constitution of the United States in " that regard, be admitted to free entry in any port of the " United States."

The said action was on the 22d of March, 1900, by writ of certiorari sued out by Henry L. Burnett, U. S. Attorney, attorney for the defendant, removed into the Circuit Court of the United States for the Southern District of New York, Second Circuit.

Thereafter, on the 2d day of April, 1900, the said U. S. Attorney, as attorney for the defendant, entered a DEMURRER to the said complaint, upon the following alleged grounds:

"First:—Upon the ground that it does not state facts " sufficient to constitute a cause of action against the de- " fendant."

"Second:—Upon the ground that this Court has no " jurisdiction of the cause of action alleged in said com- " plaint against the defendant."

Thereafter, on the 16th day of October, 1900, the said Circuit Court made and filed a decree sustaining the said demurrer *upon* BOTH *the grounds* therein stated and dismissing the complaint; judgment to that effect having been signed on the 17th day of October, 1900.

To review the said judgment the cause has been

brought to this Court by writ of error, and is No. 486 on the Docket.

We understand on consultation with Mr. Attorney General, that he prefers to argue what he deems the fundamental question raised in the Goetze and Fourteen Diamonds cases, by itself, and is not willing at this late day to prepare to argue any other question, and in deference to his wishes we move to have the case of De Lima *v.* Bidwell assigned for an early day subsequent to the date for which the other two cases have been set for argument. The case of De Lima *v.* Bidwell raises the same fundamental question as the other two cases, but it also raises questions of procedure and jurisdiction. Counsel did not think that it was proper to proceed under the Customs Administrative Act, because the power of the Collector and Appraisers thereunder seems to be limited to questions of classification of merchandise and rates of duties *in cases where it is* ADMITTED *that the goods have actually been imported*, *i. e.*, brought into the United States from a foreign country. But in this case that is the very question involved, *i. e.*, whether the goods have been brought into New York from a foreign country, or in other words, whether Porto Rico is or is not a foreign country in the sense of the Dingley Act, or is not a part of the United States in the sense of the Constitution. Article I, §8, paragraph 1.

On the question of procedure, this Court, construing the Customs Administrative Act, *in re* Fassett, 142 U. S., 479, 487, said:

> "The appeal provided for in Section 15, brings "up for review in court *only* the decision of the "board of general appraisers as to the construc- "tion of the law, and the facts *respecting the classi- "fication of* IMPORTED *merchandise*, and the rate "of duty imposed thereon under such classifica- "tion. *It does not bring up for review* the ques- "tion of WHETHER *an article* IS *imported merchan- "dise or* NOT; nor, under section 15, is the ascer- "tainment of *that fact* such a decision as is pro- "vided for. The decisions of the collector from

"which appeals are provided for by section 14 "are *only* decisions as to 'the rate and amount' of "duties charged upon IMPORTED MERCHANDISE "and decisions as to dutiable costs and charges, "and decisions as to fees and exactions of what- "ever character.

"*Nor can the Court of Review pass upon any "question which the collector had not original au- "thority to determine.* The collector has no au- "thority to make any determination regarding any "article which is not *imported merchandise;* and "if the vessel in question here is not imported "merchandise, *the Court of Review would have* NO "JURISDICTION *to determine any matter regarding "that question, and could not determine the very "fact which is in issue under the libel in the Dis- "trict Court, on which the right of the libellant "depends.*

"Under the Customs Administrative Act, the "libellant in order to have the benefit of proceed- "ings thereunder, *must concede that the vessel is "imported merchandise,* which is the very question "put in contention under the libel, and must make "entry of her as IMPORTED *merchandise* with an "invoice and consular certificate to that effect and "thus estop himself from maintaining the fact "which he alleges in his libel, that she is NOT *im- "ported* merchandise."

It is therefore respectfully submitted that the case is one which may properly be advanced for an early hearing, the question which it gives occasion and opportunity to decide upon procedure and the merits of the case being one of great public interest and importance.

Oct. 25th 1900.

COUDERT BROTHERS,
Attorneys for Plaintiff in error.